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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TANIELU TULI,

Defendant and Appellant.

2d Crim. No. B271972
(Super. Ct. No. 16PT-00189)
(San Luis Obispo County)

Tanielu Tuli appeals from the judgment entered after the trial court determined that he was a mentally disordered offender (MDO). (Pen. Code, § 2960 et seq.)¹ Appellant contends that the evidence does not support the finding that his severe mental disorder was a cause of or an aggravating factor in the

¹ All statutory references are to the Penal Code unless otherwise stated.

commission of the commitment offense. (§ 2962, subd. (b).) We affirm.

Factual and Procedural History

In 2014, appellant was convicted of false imprisonment (§ 236) of a fellow inmate and sentenced to 32 months state prison. On March 10, 2016, the Board of Parole Hearings determined that appellant was an MDO and committed him to Atascadero State Hospital for treatment. (§ 2962, subds. (a)-(d).) Appellant petitioned the superior court for trial and waived jury. (§ 2966, subd. (b).)

Appellant suffers from schizoaffective disorder, bipolar type, a severe mental disorder manifested by auditory and visual hallucinations, paranoia and delusions, depressed mood and mania, poor impulse control, and sleep disturbances. Appellant heard voices every day, said that he sees blood, and was paranoid and believed that people were saying bad things about him.

Doctor Angie Shenouda, a forensic evaluator at Atascadero State Hospital, opined that appellant met all the MDO criteria and posed a substantial danger of physical harm to others by reason of the severe mental disorder.² Appellant had a

² “A determination that a defendant requires treatment as an MDO rests on six criteria, set out in section 2962: the defendant (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) had a disorder which caused or was an aggravating factor in committing the offense; (4) the disorder is not in remission or capable of being kept in remission absent treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year before being paroled; and (6) because of the disorder, the prisoner poses a serious threat of physical harm to other people.” (*People v. Clark*

history of not taking his medication, was placed on an involuntary medication order (*Keyhea v. Rushen* (1986) 178 Cal.App.3d 526), and had a history of violence dating back to 1999.

At an April 6, 2016 interview, Doctor Shenouda asked appellant about the 2012 commitment offense. Appellant said that an inmate hit him with a broom and spit in his face and that, later in the day, appellant sought out the inmate to fight him. At trial, appellant said that he left his cell to fight the victim and that the victim “mess[ed] up my hands” and “my hand was all bleeding.”

Doctor Shenouda testified that there was no evidence that the offense was retaliatory or involved mutual combat. After the offense, appellant was evaluated by a mental health clinician who reported that appellant’s mental disorder played a role in his behavior when he committed the offense. Appellant did not say that he acted in retaliation until four years later when he was interviewed by Doctor Shenouda.

Doctor Shenouda asked appellant about two *gassing* incidents in which he threw urine at a nurse and threw feces at an officer. Appellant said that he was angry at the nurse because she was going to write him up for bad behavior. Appellant denied experiencing hallucinations when he threw feces on an officer in 2009 and said that he committed the offense because he was angry with the officer. Unlike the 2012 false imprisonment, the

(2000) 82 Cal.App.4th 1072, 1075–1076.) The sole issue on appeal is whether the third MDO criteria was met: i.e., whether the severe mental disorder was one of the causes of or was an aggravating factor in the commission of the offense. (§ 2962, subd. (b).)

gassing incidents were retaliatory and not caused by appellant's mental disorder.

Doctor Shenouda opined that appellant's severe mental disorder was an aggravating factor in the commission of the false imprisonment based on the following: When appellant committed the offense, he was receiving Enhanced Outpatient Treatment (EOP) for his mental disorder. During the assault, officers had difficulty restraining appellant, even with pepper spray. Doctor Shenouda stated that appellant's extreme mental state was consistent with the state of mind of someone experiencing psychotic symptoms or the symptoms of a severe mental disorder.

Doctor Shenouda also relied on a Rules Violation Report (RVR) which stated that the offense occurred without provocation and that appellant's mental disorder played a mitigating role in the offense.³ Doctor Shenouda explained that "if a patient is in mental health treatment and receives a rules violations, [the patient is] automatically seen by a mental health clinician to assess whether or not [the patient's] mental health symptoms played a role in that offense." Unlike the gassing incidents, there was no entry in the RVR or the clinician's evaluation that the 2012 assault was provoked or retaliatory.

³ A Rules Violation Report (RVR) is used to document serious inmate misconduct that is a violation of law or is not minor in nature. (*In re Gray* (2007) 151 Cal.App.4th 379, 389.) Such a violation is reported on a CDC Form 115 (Rev. 7/88). (Cal. Code Regs., tit. 15, § 3312, subd. (a)(3).) Appellant argued that the RVR was "nothing more than a police report" and inadmissible.

Crediting Doctor Shenouda's testimony, the trial court found that the "severe mental disorder was at least an aggravating factor. [Doctor] has her basis for that opinion, information that [appellant] had been in enhanced out patient level of care; that he had been seen by a mental health clinician shortly after the offense. It was determined that his mental health played a mitigating role in the offense. . . . [The doctor] noted that officers had difficulty containing him, despite his having been pepper sprayed, which he recalls having happened as well, which suggested to [Doctor Shenouda] that his extreme mental state at the time of the offense would be or could be consistent in experiencing psychotic symptoms."

Standard of Review

Appellant argues that we must independently review the evidence and determine whether the evidence establishes each MDO element beyond a reasonable doubt. This misstates the standard of review. In a sufficiency-of-the-evidence appeal, we view the entire record in the light most favorable to the judgment, drawing all reasonable inferences, and resolving all conflicts in favor of the judgment. (*People v. Martin* (2005) 127 Cal.App.4th 970, 975.) Although we must ensure the evidence is reasonable, credible and of solid value, it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. (*People v. Clark, supra*, 82 Cal.App.4th at p. 1082.) The federal standard of review is to the same effect under principles of federal due process. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.)

Mental Illness as an Aggravating Factor

Ample evidence supports the finding that appellant's severe mental disorder was "one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison." (§ 2962, subd. (b); *People v. Clark, supra*, 82 Cal.App.4th at p. 1083.) Causation was established based on three overlapping factors, all of which were credited by the trial court. First, appellant had a long history of mental illness and was receiving EOP treatment when he committed the offense. That is why he was evaluated by a mental health clinician before the RVR was prepared. Unlike the gassing incidents, there was no documentation that the false imprisonment was retaliatory, that appellant left his cell to fight the victim, or that it was mutual combat.

A second factor was appellant's extreme mental state and psychotic behavior. When appellant assaulted the victim, officers had difficulty restraining appellant even with pepper spray. Doctor Shenouda stated that appellant "was in [an] extreme mental state at the time of the crime" and his behavior was consistent with the state of mind of someone experiencing psychotic symptoms or symptoms of a severe mental disorder.

A third factor was that a mental health clinician reported, in 2012, that the mental disorder played a role in the offense. Appellant argues that an expert witness may not channel or parrot the opinions of an out-of-court witness, but that did not happen here. The clinician did not evaluate appellant to see if he was MDO. Doctor Shenouda's expert opinion testimony was based on her interview with appellant, the facts and circumstances of the offense, the RVR and clinician's evaluation, the prior gassing incidents, and appellant's mental

health records. All of this was documented in 500 pages of records and considered by the doctor. There is no merit to the argument that Doctor Shenouda was parroting the inadmissible opinion of another expert, i.e., the mental health clinician who evaluated appellant in 2012.

Appellant argues that his EOP treatment does not support the finding that his mental disorder was a cause of or aggravating factor in the commission of the offense. Appellant's treatment, however, explains why he was evaluated by a mental health clinician and why the RVR was prepared. The RVR tended to show that appellant's mental health providers believed the mental disorder played a role in the offense. It further showed that appellant did not tell the clinician or prison staff that the assault was retaliatory. On review, we are precluded from reweighing the evidence or substituting our judgment for that of the trial court. (*People v. Miller* (1994) 25 Cal.App.4th 913, 919.)

Although the RVR contained multiple hearsay, an expert witness may rely on reliable hearsay in formulating an opinion. (*People v. Gardeley* (1996) 14 Cal.4th 605, 618-619, disapproved on other grounds in *People v. Sanchez* (2016) 63 Cal.4th 665, 686, fn. 13; *People v. Cooper* (2007) 148 Cal.App.4th 731, 747 [experts may rely on and testify to sources on which opinions are based, including hearsay]; *People v. Baker* (2012) 204 Cal.App.4th 1234, 1245, fn. 9 [mental health experts may rely on hearsay to support their opinions regarding causation].) In *People v. Stevens* (2015) 62 Cal.4th 325, our Supreme Court held that "an MDO hearing contemplates expert opinion testimony on [certain] factors, including whether the defendant's severe mental disorder was one of the causes of or an aggravating

factor in the commission of the crime. (§ 2962, subd. (b).) As to those factors, the expert may rely on hearsay documents that are ‘of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates.’ (Evid. Code, § 801, subd. (b).)” (*Id.*, at p. 336.) Doctor Shenouda explained that the clinician’s evaluation was “a source of evidence” and that RVRs are commonly relied upon by mental health experts to render an MDO opinion.⁴

Doctor Shenouda’s testimony about the clinician’s evaluation was admitted, not for the truth of the matter stated, but to explain the basis for the doctor’s expert opinion. (Evid. Code, § 802.) Mental health experts may “rely upon reliable hearsay, including the statements of the patient and other treating professionals, in forming their opinion concerning a patient’s mental state. [Citations.]” (*People v. Campos* (1995) 32 Cal.App.4th 304, 307-308.) The trial court did not err in crediting Doctor Shenouda’s expert opinion testimony. Substantial evidence supports the finding that the mental disorder was an aggravating factor in the commission of the offense. (*People v. Valdez* (2001) 89 Cal.App.4th 1013, 1018; *People v. Clark*, *supra*, 82 Cal.App.4th at p. 1083; *People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [single psychiatric opinion constitutes substantial evidence].)

⁴ Doctor Shenouda testified that appellant was evaluated by mental health clinicians after the gassing incidents and that the clinicians reported that the gassings were retaliatory. In 2013, a psychiatrist (Doctor Botello) reviewed the clinicians’ evaluations and reported that appellant’s mental health did not appear to play a role in the gassing incidents.

The judgment (MDO commitment order) is affirmed.
NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

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